

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/344353

APPLICANT: NISSIN FOOD PRODUCTS CO., LTD.

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MARK: CUP NOODLES

CORRESPONDENT'S REFERENCE/DOCKET NO : 22265.0002

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 76/344353

Registration was refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the mark for which registration is sought so resembles the mark shown in U.S. Registration No. 1196356 as to be likely, when used on the identified goods, to cause confusion, or to cause mistake, or to deceive.

The examining attorney has considered the applicant's arguments carefully but has found them unpersuasive. For the reasons below, the refusal under Section 2(d) is maintained and made FINAL.

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977). TMEP §§1207.01(b) *et seq.* The respective marks, CUP NOODLES and CUP O'NOODLES, are quite similar in sound, appearance and meaning. Please be aware that when the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956). TMEP §1207.01(b).

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). TMEP §1207.01(a)(i). The respective goods, both essentially dehydrated noodles for use in making instant soup, are identical. It is where goods are directly competitive that likelihood of confusion is greatest.

Please note that if the goods or services of the respective parties are closely related, as here, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). TMEP §1207.01(b).

Moreover, the examining attorney must resolve any doubt as to the issue of likelihood of confusion in favor of the registrant and against the

applicant who has a legal duty to select a mark which is totally dissimilar to trademarks already being used. *Burroughs Wellcome Co. v. Warner & Lambert Co* 203 USPQ 191 (TTAB 1979).

Please note that the only appropriate responses to a final action are either (1) compliance with the outstanding requirements, if feasible, or (2) filing of an appeal to the Trademark Trial and Appeal Board. 37 C.F.R. §2.64(a). If the applicant fails to respond within six months of the mailing date of this refusal, this Office will declare the application abandoned. 37 C.F.R. §2.65(a).

/Zhaleh Delaney/
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How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Print: Oct 29, 2003

1196356

TYPED DRAWING

Serial Number

73199307

Status

REGISTERED AND RENEWED

Word Mark

CUP O'NOODLES

Registration Number

1196356

Date Registered

1982/05/25

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Nissin Foods (U.S.A.) Co., Inc. CORPORATION CALIFORNIA 2001 W.
Rosecrans Ave. Gardena CALIFORNIA 90249

Goods/Services

Class Status -- ACTIVE. IC 029. US 046. G & S: Oriental Style,
Dehydrated Noodles and Soup Stock in a Disposable Container. First
Use: 1973/11/01. First Use In Commerce: 1973/11/01.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

1979/01/08

Examining Attorney

UNKNOWN

Attorney of Record

RICHARD M. LABARGE